

1 **THE CALIFORNIA PUBLIC LIBRARY**
2 **CONSTRUCTION AND RENOVATION BOARD MINUTES**

3
4 **Department of Water Resources**
5 **First Floor Auditorium**
6 **1416 Ninth Street**
7 **Sacramento, California 95814**
8 **September 6, 2001**
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11 **I. CALL TO ORDER, INTRODUCTIONS**

12 Dr. Kevin Starr, State Librarian of California, convened the meeting on September 6,
13 2001, at 1:37 p.m., and welcomed Board members, staff, and the audience to the meeting.

14 The following Board members were present:

15 Mr. Juan Fernandez, representing the Treasurer; Ms. Lisa Giroux, representing
16 Senator Dede Alpert; Mr. Bryte Johnson, representing Assembly member Ellen Corbett, but
17 not voting; and Ms. Annette Porini, representing the Director of Finance.

18 **II. ADOPTION OF AGENDA**

19 *It was moved, seconded and carried unanimously (Porini/Giroux) that the*
20 *California Public Library Construction and Renovation Board adopt the agenda.*

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22 **III. APPROVAL OF JUNE 25, 2001, BOARD MEETING MINUTES**

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24 *It was moved, seconded and carried unanimously (Fernandez/Porini) that the*
25 *California Public Library Construction and Renovation Board approve the minutes*
26 *of the June 25, 2001, Board meeting.*

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28 **IV. SUMMARY OF PUBLIC COMMENTS**

29 Dr. Starr introduced Richard Hall, Library Bond Act Manager. Mr. Hall indicated
30 that the Board and audience would find summaries of comments received from the field
31 during the 45-day comment period for Title 5 and Title 24, respectively, under Tab C, Items
32 1 and 2, which are provided for reference. Mr. Hall stated that the comment summaries are

sorted in order by regulation section number and include comments received at the Formal Public Hearing held on Tuesday, September 4, 2001.

V. MODIFICATIONS TO PROPOSED REGULATIONS

Mr. Hall provided the Board and audience with an update on the progress of the Title 5 and Title 24 draft proposed regulations. He explained that following the 45-day comment period, which closed on September 4, 2001, staff modified the regulations based on comments received. Staff is before the Board today for approval of draft proposed modifications to the previously proposed regulations.

Mr. Hall explained that although staff is only required by the Office of Administrative Law (Title 5) and the Building Standards Commission (Title 24) to send modifications to the proposed regulations for a 15-day comment period to those who commented during the 45-day comment period, staff will send the modified proposed regulations to the entire rulemaking list, with instructions to any who wish to comment that their comments must be limited to only items that have been modified. Further, if there are substantial changes made based on comments received during the 15-day comment period, staff will seek Board approval to adopt any suggested modifications and open a second 15-day comment period.

Dr. Starr questioned whether changes that are technical in nature, such as punctuation and formatting, would require Board approval. Mr. Hall stated that staff recommends that the Board allow latitude to make those types of necessary non-substantial changes when the Board takes an action regarding approval of proposed modifications.

54 A. **Modified Proposed Title 5 Library Bond Act Regulations and**
55 **Application**
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57 Mr. Hall introduced Linda Springer, Library Facilities Consultant – Title 5
58 Compliance. Ms. Springer presented a page-by-page synopsis of modifications made to the
59 proposed regulatory language in response to written comments received during the 45-day
60 comment period, as well as comments received at the Formal Public Hearing.

61 Ms. Springer explained that the changes in the regulations are indicated by a vertical
62 line in the left margin of the document, with double underlining for added language and
63 strike-through for deletions. She pointed out the various changes throughout the regulations,
64 which include changes in certain definitions for the purpose of clarity, consistency in
65 terminology, and non-substantial changes relating to formatting. Ms. Springer paused in her
66 presentation and requested Mr. Hall to present information on construction cost estimators,
67 found on page 16, line 660.

68 Mr. Hall explained that the State Library successfully utilized the nationally known
69 construction cost estimating firm, Marshall and Swift Valuation Service, to provide a public
70 library construction cost per square foot figure during the previous Library Bond Act
71 program. However, he noted that the most recent published figure is now several years old
72 and based on national cost averages for libraries rather than just those within California. He
73 explained that there has been a significant increase in construction costs in California in
74 recent years, which prompted the State Library to conduct a new survey of the California
75 library community to gather their most recent construction costs. Mr. Hall directed the
76 Board to the document entitled “Special Studies, Library Buildings,” found at Tab E, Item 1.
77 This document was produced by Marshall & Swift based on State Library survey results.

Staff recommends that the Board consider using this document to determine normal construction costs for the State of California for public library construction.

Mr. Hall explained that the baseline construction figure for a new building is \$202 per square foot and \$238 per square foot for the new construction where there is an expansion. These figures are to be modified based on county multipliers developed from analysis of the local construction atmosphere.

1. Lease Agreements

(Robert Feyer, Bond Counsel to the State Treasurer arrived at the Board meeting)

Dr. Starr introduced Mr. Robert Feyer of Orrick, Herrington & Sutcliffe, the law firm in San Francisco that advises the Attorney General on issues relating to real estate law and bond acts. Dr. Starr asked Mr. Feyer to discuss conditions under which an applicant library district may utilize state bond proceeds to acquire, construct, or renovate library facilities on land which is leased from another entity.

Mr. Feyer stated that in his capacity as Bond Counsel to the State Treasurer, his firm would approve the opinions necessary for the Treasurer to issue bonds under this Bond Act. He introduced Jennifer Rockwell, Deputy Attorney General, who has provided advice to the Board and Bond Act staff on the issue of leasing.

Mr. Feyer presented an outline to the Board, staff, and audience that sets the parameters under which an applicant to the Board for a grant under the Bond Act can plan to construct or renovate a facility on land which the applicant does not own. Mr. Feyer alluded to the legal opinion previously provided by the Attorney General's office and stated that the outline augments that legal opinion.

Ms. Rockwell stated that an informal opinion presented by the Attorney General's office at the last Board meeting stated that, while the Bond Act does not forbid leases, they should be as close to fee simple ownership as possible. Further, there would be significant restrictions on a lease of this type. Ms. Rockwell stated that the lessee could not be removed from the site and could not be evicted, raising possible tax issues. It is necessary to establish serious restrictions for any type of lease entered into in order to be eligible for funds under the Bond Act.

Mr. Feyer explained that the specific conditions or limitations that would be necessary in a lease in order for the project to be eligible under the Bond Act would depend on an analysis of the distinction between a public agency as the lessor and a private landlord. In the outline, there is a list of "public agency owner" requirements, which also apply to private owners or landlords, as well as a separate list of "private owner" requirements. Mr. Feyer reviewed all of the requirements in the outline (See @@ "Title of Document" which is hereby incorporated by reference and attached to the minutes) in detail. Further, he recommended that the proposed documentation – the lease, title report and proposed opinions - be submitted in advance and approved by staff prior to the approval of any bond funds.

The following action was taken by the Board in response to Mr. Feyer's recommendations:

It was moved, seconded and carried unanimously (Porini/Giroux) that the California Public Library Construction and Renovation Board instruct staff to incorporate the document which describes the use of the lease, allowing for technical and conforming changes, through counsel.

(Return to Discussion of Construction Costs)

125 Mr. Hall returned to the discussion on construction costs on page 16, line 660. He
126 emphasized that the \$202 per square foot or \$238 per square foot figures only pertain to the
127 construction of the building alone. These figures are exclusive of site development and
128 demolition, and furnishings and equipment and other entities such as architectural and
129 engineering fees.

130 Mr. Hall explained that these figures would be adjusted by the locality adjustment
131 table, starting on page 17, also found in Appendix E, Item 2. Every county in the state is
132 listed and each has a multiplier factor. The multiplier factor is applied to the \$202 or \$238
133 per square foot so that any factor that is above 1.00 would equal an additional amount and
134 anything below 1.00 would be slightly lower. Mr. Hall explained that this is a reasonable
135 figure and is based on actual data by a nationally recognized construction cost-estimating
136 firm.

137 Mr. Hall moved on to discuss the inflation rate. At the bottom of the “Special
138 Studies” table, Marshall and Swift provide a five-year summary of cost adjustments for
139 inflation, which average approximately 2.4 percent per year. Mr. Hall suggested the
140 modification that would allow the applicant to apply the inflation percentage of one-fifth of
141 one percent per month, starting on January 1, 2002. If a project is planned two years in
142 advance, there would be 24 months at one-fifth of one percent for each month that would be
143 allowed to be added to the adjusted cost per square foot. Any costs beyond that would
144 require 100 percent funding with local supplemental funds.

145 *(Return to Discussion of Title 5 Library Bond Act Regulations and Application)*
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147 Ms. Springer resumed her review of the modifications to the Title 5 regulations, as
148 well as modifications made to the Title 5 Application Form. She stated that on page 52, line

149 2486, there is a work sheet where an applicant is asked to fill in the appropriate construction
150 cost figure for the project. The one-fifth percent per month inflation factor has been inserted
151 in the next box, at lines 2498 and 2502.

152 Ms. Springer went on to explain that for the comparable public construction cost
153 approach, found on line 2544, staff inserted a cross-reference so that applicants will know
154 where to find the information about that issue in the narrative section of the regulations.

155 Ms. Springer then completed her review by pointing out other minor changes
156 throughout the regulations, including changes in definitions for the purpose of clarity,
157 consistency in terminology, and non-substantial changes relating to formatting.

158 Following Ms. Springer's review of the modifications to the Title 5 proposed
159 regulations, the following action was taken by the Board.

160 *It was moved, seconded and carried unanimously (Fernandez/Giroux) that the*
161 *California Public Library Construction and Renovation Board adopt modifications*
162 *as presented, with staff authorized to make minor technical adjustments as are*
163 *necessary, in keeping with the spirit and intent of those changes. Staff should*
164 *thereupon submit the modified proposed Title 5 regulations for a 15-day comment*
165 *period. If there are no subsequent changes of substance to be made at the end of*
166 *the 15-day comment period, staff will then submit the proposed Title 5 regulations*
167 *to the Office of Administrative Law for review and approval.*

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169 (A recess was taken from 2:48 p.m. to 3:08 p.m.)

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171 **B. Modified Proposed Title 24 Library Bond Act Regulations**

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173 Mr. Hall introduced Barbara Silken, Library Facilities Consultant – Title 24
174 Compliance. Ms. Silken presented the modifications made to the proposed Title 24
175 regulations in response to written comments received during the 45-day comment period.
176 There were no comments on the Title 24 proposed regulations at the Formal Public Hearing.

Following Ms. Silken's presentation of the modifications to the Title 24 proposed regulations, the following action was taken by the Board.

It was moved, seconded and carried unanimously (Giroux/Porini) that the California Public Library Construction and Renovation Board adopt modifications as presented, with staff authorized to make minor technical adjustments as are necessary, in keeping with the spirit and intent of those changes. Staff should thereupon submit the modified proposed Title 24 regulations for a 15-day comment period. If there are no subsequent changes of substance to be made at the end of the 15-day comment period, staff will then submit the proposed Title 24 regulations to the Building Standards Commission for review and approval.

1. Joint Powers Authorities

Mr. Hall opened a discussion of the legal opinion from the Attorney General's office, found at Tab E, Item 2, regarding joint powers authorities (JPA), which states that a JPA cannot be a proper applicant for Library Bond Act funds. Mr. Hall explained that in initial discussions with the Attorney General's office, the proposed regulations and application form as written and proposed for the 45-day comment period do not allow for, or include, the ability of a JPA to be an applicant. The opinion recently received from the Attorney General's office confirms that the authority is not present for application to be made by a JPA.

Jennifer Rockwell further explained that while a JPA itself cannot be a proper applicant, if a city or county have formed a JPA, either the city or the county could be an applicant.

VI. OPEN PUBLIC FORUM

Roger Possner, Covina Public Library, stated that negotiations for cooperative agreements have assisted them in learning more about school services and their plans for the future. He believes the experience of having to negotiate is useful and will accomplish the goals of the Bond Act. However, he wanted the Board to understand how difficult these

negotiations can sometimes be and that they are highly dependent upon both parties' being mutually cooperative.

Yukio Kawaratani, City of Monterey Park, commented on the time it takes to plan a project. The City of Monterey Park is well along with its project. He expressed concern that their project would not be a first priority project and wondered if that meant they had no chance of being funded.

Richard Hall explained that even though a project is classified as a priority one project, it might not automatically be funded if it did not meet the review factors in Section 19998 of the Bond Act. For example, if there were two projects, one a priority one and the other a priority two, and both were equal in terms of quality with respect to Section 19998 and were the same other than priority status, the Board would fund the priority one project first. If a first priority project did not do well in responding to the factors in Section 19998, but a second priority project did, it was possible that the Board could decide to fund the second priority project over the first priority project. That is, just being a first priority project does not guarantee that a project will be funded, nor does being a second priority project mean that a project will not be funded.

Susan Hildreth, San Francisco Public Library, asked if the Board has an idea of how long it would take to review applications between cycles.

Mr. Hall responded that it is difficult to estimate the number of applications that will be submitted at each application cycle. He assured Ms. Hildreth that the Board and staff would move as expeditiously as possible to perform those reviews. However, he also indicated that staff did not want to rush through the review process especially given the amount of time and effort applicants will put into an application.

David Flint, County of Los Angeles Public Library, complimented staff on a job well done.

Paul Cianfichi, Ian Mackinlay Architecture in San Francisco, encouraged the Board to consider using the assignable square footage as the multiplier, which he believes would provide a better budgetary process for each project.

Mr. Hall responded that it is standard for public libraries to have between 20 and 25 percent of space that is not assignable. He explained that while it varies in some communities, the applicant might desire to have a higher percentage or a lower percentage. Staff would note for the Board, however, if it saw an application that was extremely high in one area. Regardless of which square footage figure the cost for a project is based on, staff believes that the 35 percent local contribution will control the figure becoming excessively large.

VII. ADJOURNMENT

Dr. Starr called for a motion to adjourn.

It was moved, seconded and carried unanimously (Porini/Giroux) that the California Public Library Construction and Renovation Board Meeting be adjourned.

The Board meeting was adjourned at 3:46 p.m.

Respectfully submitted,

Linda Springer, Deputy Library Bond Act Manager

Dated: May 6, 2002

Adopted: May 9, 2002